

# Notice of Allowability

Application No.

10/067,385

Examiner

S. Devi, Ph.D.

Applicant(s)

ADAMOU ET AL.

Art Unit

1645

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants' amendment filed 03/31/06.
2. ☒ The allowed claim(s) ~~is/are~~ 4 and 24-28, now renumbered as claims 1 and 2-6 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## ATTACHMENT TO NOTICE OF ALLOWABILITY

### Applicants' Amendment

- 1) Acknowledgment is made Applicants' amendment filed 03/31/06 in response to the non-final Office Action mailed 09/19/05.

### Examiner's Amendment

- 2) An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. The authorization to prepare this Examiner's amendment was provided by Mr. Alan Grant in a telephonic interview on 23 June 2006.

The instant application has been amended as indicated below:

- (a) The first paragraph of the specification on page 1 has been replaced with the following paragraph:

--This application is a Divisional of application serial number 09/590,991, filed 06/09/2000, now U.S. patent 6,887,480, which claims priority to the U.S. provisional application 60/138,453, filed 06/10/1999, the disclosure of which is hereby incorporated by reference in its entirety.--

- (b) Claims 1, 3, 11-13, 18 and 21 have been canceled.

- (c) The following new claims have been added.

--Claim 24 (New). A vaccine comprising the immunogenic composition of claim 4 and a pharmaceutically acceptable carrier, wherein said polypeptide is present in an amount effective to elicit protective antibodies in a mammal against *Streptococcus pneumoniae*.

Claim 25 (New). A method of attenuating an infection caused by *Streptococcus pneumoniae* in a mammal comprising administering to said mammal the immunogenic composition of claim 4 comprising the polypeptide in an amount effective to attenuate said *Streptococcus pneumoniae* infection.

Claim 26 (New). A method of immunizing a mammal against an infection caused by *Streptococcus pneumoniae* comprising administering to said mammal the vaccine of claim 24.

Claim 27 (New). An immunogenic composition comprising one or more immunogenic fragments selected from the group consisting of amino acid residues 650-773, 640-773, 630-773, 620-773, 610-773, and 600-773 of the amino acid sequence of SEQ ID NO: 8.

Claim 28 (New). A method of immunizing a mammal against an infection caused by *Streptococcus pneumoniae* comprising administering to said mammal the immunogenic composition of claim 27.--

### **Status of Claims**

- 3) Claims 1, 11, 12, 18 and 21 have been amended via the amendment filed 03/31/06. Claims 1, 3, 11-13, 18 and 21 have been canceled via this Examiner's amendment. New claims 24-28 have been added via this Examiner's amendment. Claims 4 and 24-28 are pending.

The previously withdrawn method claims, 12 and 13, are now presented as new claims 25 and 26 respectively, via this Examiner's amendment. These claims now depend from the product claims 4 and 24 respectively, and have been rejoined with the elected product claims, and fully examined in accordance with the provision of MPEP § 821.04. See paragraph 11 below.

### **Objection(s) Withdrawn**

- 4) The objection to claim 1 made in paragraph 11 of the Office Action mailed 09/19/05 is withdrawn in light of Applicants' amendment to the claim.

### **Rejection(s) Moot**

- 5) The rejection of claim 11 made in paragraph 11 of the Office Action mailed 02/27/04 maintained in paragraph 26 of the Office Action mailed 02/23/05 and paragraph 12 of the Office Action mailed 09/19/05 under 35 U.S.C. § 112, first paragraph, as being non-enabled with regard to the scope, is moot in light of the cancellation of the claim.
- 6) The rejection of claim 1, 3 and 11 made in paragraph 10 of the Office Action mailed 02/27/04 and maintained in paragraph 25 of the Office Action mailed 02/23/05 and paragraph 11 of the Office Action mailed 09/19/05 under 35 U.S.C. § 112, first paragraph, as being non-enabled with regard to the scope, is moot in light of the cancellation of the claims.

- 7) The rejection of claims 1, 3 and 11 made in paragraph 13 of the Office Action mailed 09/19/05 under 35 U.S.C § 112, first paragraph, as containing new subject matter, is moot in light of the cancellation of the claims.
- 8) The rejection of claim 21 made in paragraph 14 of the Office Action mailed 09/19/05 under 35 U.S.C. § 112, first paragraph, as being non-enabled with regard to their scope, is withdrawn in light of Applicants' amendment to the claim.
- 9) The rejection of claim 1 made in paragraph 15(a) of the Office Action mailed 09/19/05 under 35 U.S.C. § 112, second paragraph, as being indefinite, is withdrawn in light of Applicants' amendment to the claim.
- 10) The rejection of claim 1 made in paragraph 15(b) of the Office Action mailed 09/19/05 under 35 U.S.C. § 112, second paragraph, as being indefinite, is withdrawn in light of Applicants' amendment to the claim.

### **Remarks**

11) Claims 4 and 24-28, now renumbered as claims 1 and 2-6 respectively, are allowed. The previously withdrawn claims 12 and 13 are now presented as new claims 25 and 26 respectively, These claims are now drawn to a method of using the allowable product claims 4 and 24 respectively. Pursuant to the procedures set forth in the *Official Gazette Notice* dated March 26, 1996 (1184 O.G. 86), these process claims are now subject to being rejoined. These process claims have been fully examined for patentability under 37 C.F.R 1.104. The restriction requirement made between the claimed product(s) and the process of using the product(s) is hereby withdrawn.

New claim 24 finds support in the canceled claim 11. New claim 27 finds descriptive support in the canceled claim 21 and last paragraphs on pages 12 and 14 of the instant specification. New claim 25 has descriptive support in the canceled amended claim 12, original claim 12, second full paragraph on page 11, and the paragraph bridging pages 11 and 12 of the specification. New claim 26 has support in the canceled claim 13 and lines 15-24 on page 5 of the instant specification. The descriptive support for the new claim 28 can be found at lines 15-24 on page 5, second full paragraph on pages 11 and 12, the paragraph bridging pages 11 and 12, and second and third full paragraphs on page 13 of the instant specification.

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**12)** Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Central Fax number (571) 273-8300, which receives facsimile transmissions 24 hours a day and 7 days a week.

**13)** Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**14)** Any inquiry concerning this communication or earlier communication(s) from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

  
S. DEVI, PH.D.  
PRIMARY EXAMINER

June, 2006